IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.366 OF 2006
WITH
CIVIL APPLICATION NO.457 OF 2006
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CIVIL APPLICATION NO.458 OF 2006

Laxman Barkya Wadkar & Ors.) ... Appellants

Vs.

Municipal Corporation of Greater Mumbai.) ... Respondents

Mr. Ranjit A. Thorat for the Appellants.

Ms. Geeta Joglekar for the B.M.C.

CORAM : A.M. KHANWILKAR, J.

DATED : 8TH JUNE, 2006.

P.C.:-

1. Heard the counsel for the parties. Perused the relevant documents on record. Admit. Ms. Joglekar waives service for the Respondent - Corporation. As a short question is involved, the Appeals are taken for final disposal, by consent. By these Appeals, the Appellants, who had instituted the suits before the trial court have challenged the order passed by the trial court refusing to grant ad-interim reliefs as prayed. That order was passed on 4th May 2006 in the respective suits filed by the Appellants. The main grievance of the Appellants is that that the authority has invoked section 342 of the BMC Act for issuing the Show Cause Notice to the Appellants calling upon them to demolish the suit structures within 24 hours from the receipt of

the notice, failing which the Corporation will demolish the same at the risks, costs and expenses to be borne by the Appellants.

2. According to the Appellants, there is no such power invested in the officers of the Corporation insofar as Section 342 of the BMC Act is concerned, whereas Section 342 concerns notice to be given by persons intending to erect or alter any structure. In fact, the suit structure was demolished in the recent past and they have been re-erected. That, however, cannot be the basis to invoke the power to remove the structures by invoking section 342 of the BMC Act. There is force in the argument advanced on behalf of the Appellants. The concerned officers of the Corporation have resorted to incorrect provision while issuing the suit notice to the Appellants. This will not prevent the Corporation to initiate action against the unauthorised construction by taking recourse to appropriate provision. The Corporation can do so by invoking proper enabling provisions in the Act. Suffice it to observe that case has been made out for grant of ad-interim relief. Accordingly, the impugned order passed by the court below is set aside and instead ad-interim reliefs as prayed by the Appellants in the respective proceedings are granted on the above terms.

3. It is further clarified that this order will not preclude the Corporation from issuing fresh notices by invoking appropriate enabling provisions to take recourse against the suit structures, which are allegedly unauthorised. If such notices are issued, the same will be taken to its logical end on its own merits and in accordance with law. This order may not be construed as expression of any opinion on the merits of the proposed action as per the law. The

Appeals are disposed of in the aforestated terms. No order as to costs. Accompanying civil applications are also disposed of.

(A.M. KHANWILKAR, J.)